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OGC Has Reviewed

19 December 1952

MEMORANDUM FOR: Chief, DDP/ADMIN

SUBJECT: Reassignment of ^{25X1A} [REDACTED] Personnel; Orders for

REFERENCE: Cable IN 17655, 2 December 1952 from Senior Representative, ^{25X1A} [REDACTED] to DDI

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1. You have requested our advice in connection with problems arising from the reassignment of certain overseas personnel of the [REDACTED]. You have asked that we suggest the most propitious means from a legal standpoint of handling the reassignments of these individuals to presently known or to be determined overseas posts in order that their credit for overseas service towards statutory home leave may not be jeopardized at the same time as the operational needs of the Agency will be best served. Those individuals who have completed a tour of two years' continuous service abroad may be transferred in the usual course with appropriate travel incident to statutory home leave.

2. For convenience of discussion we shall direct consideration to a series of hypotheticals which we believe will, in all likelihood, cover the typical situations that may be expected to arise.

(a) The first situation involves the individual who elects to be terminated for reasons of personal choice or who is being transferred to a permanent position in this country.

(b) The second situation involves the individual whose future assignment has already been determined to be at a post geographically proximate to his present station in [REDACTED] or at such location that the line of travel on permanent change of station would not reasonably pass through Washington, but who will require a period of orientation and training in this country before undertaking his new duties.

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(c) The third situation is similar to the second with the exception that the future assignment is geographically removed from the present assignment in [REDACTED] at such a location that the line of travel on permanent change of station would reasonably pass through Washington.

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(d) The fourth situation involves the individual whose future assignment is undetermined beyond a present plan that he will be reassigned overseas. It is furthermore necessary that this individual be returned to Washington in the meantime for instructional briefing.

(e) The fifth situation involves the individual whose future assignment is presently undetermined but who is in fact returned to an overseas post after a period of short duration in a departmental position in this country.

3. It can be generally stated that there is no authority for this Agency to pay for the cost of travel of dependents of employees on temporary duty orders. This is a rule of long-standing in Government to which this Agency has adhered unless extraordinary circumstances, relating to the preservation of cover or protection of life and property, required otherwise. As yet, such circumstances have not developed in connection with the subject reassignments.

4. The Comptroller General of the United States has indicated with reasonable clarity his position with respect to the circumstances which will preserve the continuity of service abroad for purposes of accruing credit toward statutory home leave. In 19 Comp. Gen. 750, he stated:"Where an officer's temporary return to the United States for consultation purposes had direct connection with, or relation to, his assigned post of duty abroad, it would not constitute a break in his 'continuous service abroad' within the meaning of this Section." (Referring to Section 22 of the Act of February 23, 1931, similar to Section 5.43A of the Central Intelligence Agency Act of 1949).

More recently the Comptroller General has said that the term "continuous service abroad" as used in the Central Intelligence Agency Act "reasonably and properly may be construed as requiring only continuous employment in the Central Intelligence Agency while under an assignment abroad and.....periods of consultation service in the United States under proper orders need not be considered as constituting a break in the continuity of service abroad and may be counted as part of the two years' continuous service." Decision H-93365 of 16 March 1950 (Unpublished).

In the cited unpublished decision, the Comptroller General affirmatively held that annual or sick leave taken while the individual is on temporary assignment in the United States should properly be added to the requisite period of overseas service in determining eligibility for home leave. This is presently provided for in [REDACTED] In keeping with the spirit of this decision, we would suggest the possible desirability of the implementation of some administrative regulation imposing a maximum limitation upon the length of the period of temporary

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duty which may be counted toward the total of service abroad. There is no such provision in the [REDACTED] at the present time. This office would be pleased to assist in the drafting of any such regulation to cover this and related problems.

5. In light of the foregoing legal considerations and in cognizance of the interest you have in preserving accrued credits toward home leave, we would suggest the following types of orders for reassignment of individuals in accordance with the hypothetical situations outlined in Paragraph 2.

(a) The individual in the first situation should be transferred on permanent change of station to Washington or to his planned residence if his services are to be terminated.

(b) The individual in the second situation should be transferred on permanent change of station to his new overseas post from which he could then be ordered to headquarters on temporary assignment for instructional briefing. His overseas allowances would continue in effect and the continuity of his service abroad would be preserved.

(c) The individual in the third situation should similarly be transferred on permanent change of station to his new overseas post with travel via Washington and appropriate delay enroute for briefing authorized. Where the delay at headquarters was while the individual was in a temporary duty status, it would be our opinion that the continuity of overseas service would be preserved. Overseas allowances would terminate when the individual entered a travel status and would, of course, not resume until he first reported to his new overseas post. Per diem in lieu of subsistence could be authorized while he remained in a temporary duty status.

(d) The individual in the fourth and fifth situations presents a more difficult problem. From a legal standpoint it is hard to differentiate his case from that of any other employee of this Agency who is brought home unexpectedly before the completion of a two-year term and consequently loses credit toward statutory home leave for whatever period he has served overseas. We should like to suggest alternative courses between which the Agency might elect to proceed in handling these categories of personnel.

(1) The individual could be told to leave his dependents at his present station and return to Washington for training and instruction pending reassignment. Upon determination of his new overseas post,

he could be permanently transferred, permitting issuance of travel orders for his dependents. If handled in this manner there would be no break in the continuity of overseas service.

(2) In the alternative, the individual could be transferred to Washington with his dependents for a headquarters post pending reassignment. Orders in this form would break the continuity of service overseas for purposes of determining eligibility for statutory home leave privileges under current law and regulation. It has been stated that this works a hardship upon these individuals who have committed themselves to a full two years' term abroad and now discover that they are disqualified for receipt of the home leave privilege by administrative action beyond their control. This alleged hardship in the present instance is accentuated by the circumstance that many of these individuals will be reassigned overseas as soon as posts become available. Although not conceding the existence of hardship beyond what any overseas employee of this Agency must accept as a condition of his employment, we believe that it is legally appropriate to suggest the remedial device of issuing an Agency Regulation, perhaps as a subparagraph (d) to [REDACTED], to the effect that the transfer of an individual for operational reasons to the continental United States prior to the completion of two years' continuous service abroad would not be deemed to constitute a break in continuous service abroad if such individual were reassigned to a post abroad and in fact reported to such a post within a specified time of his transfer to the continental United States.

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6. The preceding paragraphs cover the legal considerations implicitly raised by paragraphs 1 and 3 of the referenced cable.

7. Paragraph 2 of the referenced cable requests authorization for payment of a fixed amount in the nature of a "transfer allowance" to transferred mission personnel. It is proposed to pay individuals with dependents in the area, \$250., those without, \$150.

Section 6.1 of the Standardized Government Allowance Regulations (SGAR's) defines a "transfer allowance" as "a cost-of-living allowance granted pursuant to section 901(2)(11) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2)) to an officer or employee for extraordinary and necessary expenses deemed incident to the establishment of his residence at his post of assignment." Section 6.22 of the SGAR's states in part: "No transfer allowance is payable by reason of the transfer of an officer or employee to a place in the United States, its Territories or Possessions...." (Emphasis supplied). In our opinion, there would, accordingly, be legal objection to payment of the "transfer allowance" proposed to those individuals being transferred to the United States. On the other hand, where provided by the SGAR's, it would be entirely proper to authorize a transfer allowance for those personnel transferred directly to a new overseas post.

The referenced cable appears to be referring to a form of monetary benefit more in the nature of a dislocation expense than a "transfer allowance" as that term is defined in Section 6.1 of SGAR's. In order to sustain payment of any amount in the manner proposed, additional substantiating information with greater exactitude of amount and purpose should be submitted.

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